

STATE OF TEXAS, § IN THE DISTRICT COURT OF
Plaintiff, §
v. § TRAVIS COUNTY, TEXAS
STATE AND COUNTY MUTUAL §
FIRE INSURANCE COMPANY, §
Defendant. § 200TH JUDICIAL DISTRICT

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("AVC") is made and entered into this 30 day of February, 2005, by and between the State of Texas, acting through its Attorney General Greg Abbott, and State and County Mutual Fire Insurance Company (also referred to as "Defendant" or "State and County").

I. RECITALS

1.1 State and County is chartered as a county mutual insurance company pursuant to TEX. INS. CODE ANN. § 912, *et seq.*, and it writes auto insurance in the State of Texas.

1.2 This action was commenced by the State of Texas on February 14, 2000, with Plaintiff's Original Petition complaining of State and County, and alleging violations of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. COM. CODE §17.41, *et seq.*, and violation of TEX. INS. CODE Art. 21.21, and TEX. ADMIN. CODE ANN. § 21.1, *et seq.* The State of Texas complained in its Petition of the practice of deducting an amount for depreciation or betterment on certain first party claims under the Texas Private Passenger Automobile Policy of Insurance, alleging that such practice was not allowed under the policy language in the Limit of

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District Clerk
TRAVIS COUNTY, TEXAS

Liability Provision, Part D - Coverage for Damage to Your Auto. In its petition, the State of Texas sought injunctive relief, restitution to insureds, civil penalties and attorney's fees and costs.

1.3 Pursuant to TEX. INS. CODE ANN. art. 21.07-3, State and County entered into agreements with Texas-licensed Managing General Agents ("MGA's") for the period January 1, 1996 to the present whereby State and County authorized the MGA's to conduct field operations on its behalf, including accepting and processing insurance policies produced by other agents, and adjusting claims. From January 1, 1996, to the present, State and County had contracts with a total of forty-seven (47) MGA's which conducted field operations on State and County's behalf with respect to the sale of Texas personal auto policies and the adjustment of claims. Attached hereto as **Exhibit A** is a list of the MGA programs with which State and County contracted.

1.4 In response to the Attorney General's investigation and lawsuit, State and County requested that the MGA's with which it had contracts determine their practices with regard to deducting an amount for depreciation or betterment on first party auto repair claims since 1996 and conduct audits of their books and records. Sworn affidavits have been provided for State and County's MGA's as follows:

(a) Nineteen (19) MGA's did not deduct for depreciation or betterment on first party auto repair claims.

(b) Twenty-three (23) MGA's conducted audits and determined that depreciation or betterment had been deducted on some first party auto repair claims. Twelve (12) of these MGA's conducted a complete audit and eleven (11) conducted partial audits and projected what the additional depreciation or betterment would have been. The twelve (12) MGA's that conducted a complete audit of their books and records stated that a total of \$236,854.96 was deducted for depreciation or betterment on first party auto repair claims since 1996. The eleven (11) MGA's that

conducted a sample audit of their books and records estimated that a total of \$355,822.85 was deducted for depreciation or betterment on first party auto repair claims since 1996.

(c) State and County represents that a reasonable effort was made to locate and obtain the records for (5) MGA's, but that records could not be located.

1.5 In providing the information and data on which this AVC is based, State and County relies on its own records and the sworn affidavits of the MGA's with which it has contracts. In David Cleff's affidavit attached as **Exhibit B**, State and County attests that the spreadsheet attached to **Exhibit B** is an accurate summation of the information and data gathered from its own records and provided to it by the MGA's.

1.6 The practice of deducting for betterment or depreciation on first party claims has been a common practice of automobile insurers in Texas for many years and at least since adoption of the current Texas Personal Auto Policy in 1981.

1.7 The Texas Department of Insurance ("TDI") is the state agency authorized by the Texas legislature to regulate the business of insurance in Texas. TDI promulgated the standard and uniform Texas Personal Auto Policy in 1981. Although aware of insurers' practice of deducting betterment or depreciation for first party collision or comprehensive claims under the Texas Personal Auto Policy, TDI did not formally object to the practice until February 24, 2000, through Commissioner's Bulletin No. B-0014-00.

1.8 State and County alleges that it and the MGA's with which it had contracts ceased the practice of deducting for betterment or depreciation on first party auto repair claims by February 24, 2000, except that Alexander Underwriters General Agency did not cease this practice until January 11, 2002, AMCO Insurance Agency did not cease this practice until October 24, 2000, American Underwriting Managers Agency did not cease this practice until February 28, 2003, Bison Managing General Agency did not cease this practice until January 23, 2001, D.S. Barkley Texas Auto did not

cease this practice until November 16, 2001, Esprit General Agency did not cease this practice until July 12, 2000, Harbor Insurance Managers did not cease this practice until December 31, 2000, Underwriters MGA, Inc. did not cease this practice until May 31, 2002, U.S. Auto Insurance Services/Insurance Depot did not cease this practice until February 21, 2001, and the Unistar program (consisting of Advanced Underwriters, First Choice Underwriters, Great Southern General Agency, and Peak Underwriters) did not cease this practice until May 11, 2000.

1.9 State and County and its agents deny any and all liability for the claims asserted and contends that they properly and timely paid all amounts due insureds under the policy terms. State and County and its agents deny any violation of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. COM. CODE §17.41 *et seq.*, deny any violation of TEX. INS. CODE Art. 21.21, and deny any violation of 28 TEX. ADMIN. CODE §21.3 (b) or 21.1, *et seq.*

1.10 The Parties are desirous of entering into, and obtaining approval of this AVC, pursuant to TEX. BUS. COM. CODE §17.58 in order to fully and finally resolve the State's claims and disputes related to the practice of deducting an amount for depreciation or betterment on first party repair claims under the collision and comprehensive coverages of the Texas Personal Auto Policy.

1.11 State and County and its agents intend that the payment provisions of this AVC offer full and complete restitution for State and County's and its agents' alleged violations of the DTPA and Texas Insurance Code.

II. AGREEMENT

2.1 In consideration of the mutual promises and covenants herein contained, the State of Texas and State and County and its agents agree as follows:

2.2 State and County or its agents on State and County's behalf will pay each and every insured, whether a current policyholder or not, according to the procedures set forth in this AVC, the total amount deducted as depreciation or betterment ("the deduction amount"), if any, from each first

party comprehensive or collision coverage claim (where the covered auto was not adjusted as a total loss) made by the insured against a Texas personal auto policy issued by State and County where the claim was paid, in whole or in part, on or after January 1, 1996. State and County or its agents on State and County's behalf shall also pay to the insured 10% per annum simple interest on the deduction amount with such interest to be calculated from the date the claim was originally paid.

2.3 Based on information and data provided by the MGA's from their audits, State and County has identified 1,514 insureds who may be entitled to payment under paragraph 2.2. State and County and its agents will mail to each of these presently identified insureds (unless the insured has already recovered or been paid the full deduction amount), and to any insureds who subsequently request and are identified as being entitled to payment under paragraph 2.2 of the AVC, a check or draft in the amount of the deduction amount, plus 10% per annum interest on such amount, calculated from the date the claim was originally paid. State and County and its agents will make their best efforts to mail payment to presently identified insureds entitled to payment under paragraph 2.2 within sixty (60) days of the effective date of this AVC. State and County and its agents presently estimate the total amount of such payment to the presently identified insureds to be approximately \$442,261.20 including interest.

2.4 Other than presently identified insureds, State and County and its agents have been unable to identify, through searches of their electronic records, those first party auto repair claims in which betterment or depreciation was deducted. State and County and its agents have estimated, by extrapolating figures from the MGA audits for each calendar year since 1996, that approximately 1,378 presently unidentified insureds may also be entitled to payment under paragraph 2.2 above. State and County and its agents will set aside and hold, for a period of two years after the effective date of this AVC, the amount of \$510,506.04 including interest ("the set-aside") for payment of claims to the presently unidentified policyholders who qualify under paragraph 2.2 of this AVC and

whose first party comprehensive or collision coverage claim was paid, in whole or in part, before February 28, 2003, but after December 31, 1995. State and County acknowledges that it will have to establish a claims process under this AVC. Two years after the effective date of this AVC, the claims process will terminate and any and all unpaid amounts from the set-aside shall be paid within 60 days to the Office of the Attorney General for deposit to the State of Texas' general revenue fund. The payments to insureds under this paragraph shall be made as follows:

(a) Within forty-five (45) days after the effective date of this AVC, State and County and its agents will mail the State and County Notice and Claim Form in the form attached hereto as **Exhibits C and D** to its Texas policyholders who were paid on a comprehensive or collision claim (excluding those claims adjusted as a total loss) before February 28, 2003, but after December 31, 1995, and whose names and addresses are known to State and County from either its own records or whose names and addresses were made known to State and County by the MGA's. In addition, no later than forty-five (45) days after the effective date of this AVC, State and County and its agents shall also send, via electronic mail, **Exhibits C and D** (the State and County Notice and Claim Form) to any State and County policyholder who was paid on a comprehensive or collision claim (excluding those claims adjusted as a total loss) before February 28, 2003, but after December 31, 1995, whose e-mail address is available to State and County from either its own records or were made known to State and County by its MGA's.

(b) No later than forty-five (45) days after the effective date of this AVC, State and County shall publish notice of this AVC, and the claims process described herein, in newspapers of general and daily circulation in Texas cities having a population of 500,000 or more, as determined by the most recent U.S. census. The newspaper notice shall be in the form and have the content of **Exhibit E**, and shall be published in the newspapers' section for legal notices for a period of seven (7) seven consecutive days. In addition, no later than forty-five (45) days after the effective date of

this AVC, State and County shall publish notice of this AVC and the claims process described herein for a continuous period of twenty-two (22) months on any website it maintains. The website notice shall also be in the form and have the content of **Exhibit E**, and shall be clearly and conspicuously displayed. State and County shall maintain a log with the name and addresses of persons who have contacted it in response to the published notice. State and County represents that publication in newspapers of general and daily circulation in Texas cities having a population of 500,000 or more, as determined by the most recent U.S. census, will result in publication in cities and those counties immediately adjacent to those cities in which approximately ninety percent (90%) of State and County's insureds reside. If publication in such cities results in less than ninety percent (90%) coverage, then State and County will publish the notice in the next largest cities as necessary to achieve at least ninety percent (90%) coverage. State and County will provide to the Attorney General an affidavit regarding publication to support its representation of ninety percent (90%) coverage.

(c) After State and County and its agents mail a claim form, the policyholder must return by mail the claim form (**Exhibit D**) to State and County within 90 days of the date of the mailing to initiate the claims review process.

(d) Following the receipt of a timely-returned claim form, State and County and its agents will review the original claim file, and if there is an indication anywhere in the claim file that betterment or depreciation was deducted, the policyholder is entitled to the deduction amount plus interest pursuant to this AVC unless (i) there is clear and unequivocal documentation in the claim file that betterment or depreciation was ultimately not deducted on the claim or (ii) State and County's and its agents' records clearly and unequivocally reflect that the betterment or depreciation amount has already been refunded.

(e) After the claims review process, if State and County and its agents determine from the criteria set forth in this AVC that the policyholder is entitled to payment under paragraph 2.2 of this AVC, then within (60) days of the date the claim form is received, State and County and its agents shall mail directly to each such policyholder a check or draft for the deduction amount plus interest as provided in this AVC.

2.5 Each check or draft may also include on the back of the check or draft a release as follows: "I release State and County Mutual Fire Insurance Company and its agents from any and all liability related to or arising out of any betterment or depreciation deducted on this claim."

2.6 Each check or draft issued to a policyholder pursuant to paragraph 2.3 of this AVC shall be accompanied by the letter in the form attached hereto as **Exhibit F-1**. Each check or draft issued to a policyholder pursuant to the claims procedure set forth in paragraph 2.4 of this AVC shall be accompanied by the letter in the form attached hereto as **Exhibit F-2**. If a policyholder is not entitled to payment pursuant to the claims procedure set forth in paragraph 2.4 of this AVC, State and County and its agents shall notify the policyholder by a letter in the form attached hereto as **Exhibit G**.

2.7 Each check or draft will be mailed by first class mail, with address correction requested, to the most current address available to State and County and its agents. All such payments returned to State and County and its agents with a corrected address will be forwarded to such corrected address. Any checks or drafts returned to State and County and its agents that are undeliverable shall be subject to TEX. PROP. CODE ANN. § 72.001, *et seq.* State and County and its agents shall pay all costs in connection with making payments under this AVC.

2.8 Thirty-two (32) months after the Effective Date, State and County and its agents shall file with the Attorney General a verified report under oath, which shall state:

(a) the total dollar amount of payments, including interest, mailed to policyholders pursuant to this AVC;

(b) the total number of policyholders to whom checks or drafts were mailed;

(c) the total number and dollar amount of negotiated checks or drafts;

(d) the total number and dollar amount of returned checks or drafts;

(e) a list of policyholders to whom notice was sent;

(f) the total number policyholders who, pursuant to paragraphs 2.3 or 2.4 hereof, were determined to be entitled to payment under paragraph 2.2 of this AVC; and

(g) the total number policyholders who, under paragraph 2.3 or 2.4 hereof, request payment of the deduction amount but who are determined by State and County not to be entitled to payment under paragraph 2.2 of this AVC.

2.9 On or before the effective date of this AVC, and continuing thereafter, until and unless (1) the Limit of Liability section of Part D coverage under the standard Texas personal auto policy is amended to specifically permit deduction for depreciation or betterment on collision or comprehensive claims where the covered auto is not adjusted as a total loss or (2) the policy form issued by State and County is formally approved by the Texas Department of Insurance, in accordance with Tex. Ins. Code art. 5.13-2 and all other applicable laws, to specifically permit deduction for depreciation or betterment on collision or comprehensive claims where the covered auto is not adjusted as a total loss, State and County and its agents shall cease and desist from:

(a) deducting amounts for betterment or depreciation on first party collision or comprehensive coverage auto insurance claims covered under a Texas personal auto policy where the covered auto has not been adjusted as a total loss; and (b) representing to any person making a first party collision or comprehensive coverage auto insurance claim covered under a Texas personal auto

policy, where the covered auto has not been adjusted as a total loss, that deduction for betterment or depreciation on such claim is legal, required, or otherwise permitted.

2.10 Within sixty (60) days of the effective date of this AVC, State and County and its agents shall pay \$95,276.72 to the Office of the Attorney General as its attorneys' fees, expenses, and costs of investigation. Failure to pay within the designated time period shall be a material breach of this agreement.

2.11 State and County further agrees that it:

(a) will not cancel or refuse to renew the insurance coverage of any State and County insured because that insured has filed a claim form or received a payment under this AVC; provided, however, that such agreement shall not prevent State and County from canceling or non-renewing any insurance policy, or coverage under any insurance policy (including a policy held by an insured who receives a payment hereunder), for any other legitimate reason; and

(b) will not consider payments made to policyholders or to the Attorney General pursuant to this AVC in projecting future rate needs, for purposes of setting the rates State and County charges for motor vehicle insurance policies issued by State and County in Texas; provided, however, that this agreement is not intended to supersede any requirement imposed by law, or by regulation, order, or directive of the Texas Department of Insurance, on the reporting of data or the setting of rates for Texas motor vehicle insurance.

III. COURT APPROVAL

3.1 The parties agree that they will submit this AVC to a court of competent jurisdiction in Travis County and request that the court approve and enter this AVC pursuant to the terms set forth in this AVC and TEX. BUS. & COM. CODE §17.58.

3.2 This agreement shall be deemed to be finally approved and effective only after the Court has entered an order approving this AVC. If the court does not approve the terms of this AVC, this AVC shall become null and void.

3.3 The parties hereto agree that this is a compromise of a disputed claim, and that this AVC is entered into without admitting any liability, which liability is expressly denied, and without agreement by any party to any of the allegations made by another party. Nothing contained herein shall be deemed an admission of liability or wrongdoing of any kind.

3.4 The parties hereto agree to release and discharge each other and their agents and representatives (including reinsurers) from any and all claims for damages or other relief, other than as provided herein, arising out of State and County's and its agents' practice of deducting for betterment or depreciation on first party collision or comprehensive coverage auto damage insurance claims (where the covered auto has not been adjusted as a total loss) that may exist as of the effective date of this AVC, whether or not asserted by the parties, in their pleadings in this case or otherwise.

3.5 The parties represent and warrant, each to the other, that each has the authority to enter into and make this AVC, and to bind themselves to this AVC. State and County and the Attorney General agree that nothing in this AVC shall create any private rights, causes of action or remedies of any other party against State and County and/or its agents.

3.6 This AVC shall be governed by TEX. BUS. & COM. CODE §17.58.

3.7 Any and all taxable costs of court are taxed against State and County.

IV. MISCELLANEOUS PROVISIONS

4.1 No modification of this AVC may be made, except by written agreement of both the Plaintiff and State and County.

4.2 This AVC may be executed in any number of counterparts and each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same AVC.

EXECUTED AND EFFECTIVE this 3rd day of February, 2005.

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

PAUL CARMONA
Chief, Consumer Protection and Public Health Division

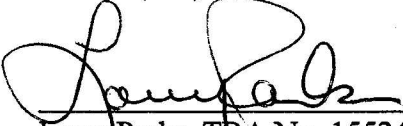
By:



RAY OLAH
State Bar No. 00794391
Assistant Attorney General
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By: 
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For the Firm

ATTORNEYS FOR DEFENDANT

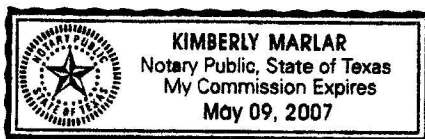
State and County Mutual Fire Insurance Company

By: 
David Cleff
Title: General Counsel

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

On this 6 day of January, 2005, before me, the undersigned authority, personally appeared David Cleff, who is personally known to me and acknowledged himself to be an agent for State and County Mutual Fire Insurance Company, and he, as such an agent, being authorized to do so, executed the foregoing instrument for the purpose and consideration therein contained by signing for State and County Mutual Fire Insurance Company by himself as an agent for such.

In witness whereof, I hereunto set my hand and official seal.





Notary Public, State of Texas

EXHIBIT A

| MGA | No D&B | D&B Complete Audit | D&B Partial Audit |
|---|-------------------|-------------------------------|------------------------------|
| Advanced Underwriters (Part of the Unistar program) | | X | |
| Alexander Underwriters General Agency | | | X |
| All American General Agency | X | | |
| Allegiance General Agency | | | X (no records) |
| All Texas General Agency/Best Texas General Agency | X | | |
| All Tex General Agency | | X | |
| AMCO Insurance Agency | | X | |
| American Century Casualty Company (ACCC General Agency) | X | | |
| American Hallmark Insurance Company | | | X |
| American Mercury Insurance Co. | | | X |
| American Southwest Insurance Managers | X | | |
| American Underwriting Managers Agency | | | X |
| Associated General Agency | X | | |
| Bison MGA | | | X |
| Bristol West Ins. Services of Texas | | X | |
| CAPCO | | | X (no records) |
| Clark and Company | | | X (no records) |
| Combined General Agency | X | | |
| D.S. Barkley Texas Auto | | X | |

| | | | |
|---|---|---|----------------|
| Esprit General Agency | | X | |
| First Choice Underwriters (Part of the Unistar program) | | X | |
| Frontier General Insurance Agency | | X | |
| Great Southern General Agency (Part of the Unistar program) | | X | |
| Harbor Insurance Managers | | | X |
| Heritage General Agency | X | | |
| Ideal General Agency/Louis A. Williams & Associates | X | | |
| Imperial General Agency of Texas | X | | |
| Instant Auto Insurance | X | | |
| Kendrick General Agency | | | X (no records) |
| Lyndon General Agency | X | | |
| Mendota Insurance Services | X | | |
| Peak Underwriters (Part of the Unistar program) | | X | |
| Reliant American General Agency | X | | |
| Russell Grace, Inc. | X | | |
| Safeway Managing General Agency | | | X |
| Scanio, Thompson & Assoc. | X | | |
| Southeast Surplus Underwriters | | | X |
| Spartan General Agency | | | X |
| Southern United General Agency | X | | |
| Standard Insurance Agency | X | | |
| Texas All Risk General | X | | |

| | | | |
|---|---|---|----------------|
| Agency | | | |
| Texas American Horizon | | | X (no records) |
| Texas Windsor Group, Inc. | | X | |
| U.S. Auto Insurance Services/Insurance Depot | | X | |
| Underwriters MGA, Inc. | | | X |
| Van Wagoner Companies | X | | |
| Vaughn General Agency | | | X |

EXHIBIT B

CAUSE NO. GV 000280

| | | |
|--|---|---------------------------------|
| STATE OF TEXAS, | § | IN THE DISTRICT COURT OF |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | TRAVIS COUNTY, TEXAS |
| | § | |
| STATE AND COUNTY MUTUAL FIRE INSURANCE COMPANY, | § | |
| | § | |
| Defendant. | § | 200TH JUDICIAL DISTRICT |
| | § | |
| STATE OF TEXAS | § | |
| | § | |
| COUNTY OF DALLAS | § | |

AFFIDAVIT OF DAVID CLEFF

Before me, the undersigned authority, personally appeared David Cleff, who, being by me duly sworn, deposed as follows:

“1. My name is David Cleff. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts stated herein or have gathered such facts from the records and personnel of State and County Mutual Fire Insurance Company (“State and County”) and the affidavits of the MGA’s identified in this affidavit.

“2. I am the General Counsel of State and County. I have been employed in that capacity since May 2001.

“3. Pursuant to Tex. Ins. Code Ann. 21.07-3, State and County entered into agreements with Texas-licensed operations on its behalf, including accepting and processing insurance policies produced by other agents, and adjusting claims for the time period January 1, 1996 to the present.

“4. From January 1, 1996 to the present date, State and County had contracts with a total of forty-seven (47) MGA’s that conducted field operations on State and County’s behalf with respect to the sale of Texas personal auto policies, and the adjustment of claims. These forty-seven (47) MGA’s are identified on Exhibit “1,” attached hereto.

“5. Nineteen (19) MGA’s, All American General Agency, All Texas General Agency (now known as Best Texas General Agency), American Century Casualty Company ("ACCC General Agency"), American Southwest Insurance Managers, Associated General Agency, Combined General Agency, Heritage General Agency, Ideal General Agency/Louis A. Williams & Associates, Imperial General Agency of Texas, Instant Auto Insurance, Lyndon General Agency, Mendota Insurance Services, Reliant American General Agency, Russell Grace, Inc., Scanio, Thompson & Associates, Southern United General Agency, Standard Insurance Agency, Texas All Risk General Agency, and Van Wagoner Companies, have stated under oath that they took no deductions for depreciation or betterment.

“6. Twenty-three (23) MGA’s, Advanced Underwriters, Alexander Underwriters General Agency, All Tex General Agency, AMCO Insurance Agency, American Hallmark Insurance Company, American Mercury Insurance Co., American Underwriting Managers Agency, Bison Managing General Agency, Bristol West Insurance Services of Texas, D.S. Barkley Texas Auto, Esprit General Agency, First Choice Underwriters, Frontier General Insurance Agency, Great Southern General Agency, Harbor Insurance Managers, Peak Underwriters, Safeway Managing General Agency, Southeast Surplus Underwriters, Spartan General Agency, Texas Windsor Group, Inc., Underwriters Managing General Agency, Inc., U.S. Auto Insurance Services/Insurance Depot and Vaughn General Agency, performed either partial or complete audits of their programs and stated under oath that they found that they had taken deductions for depreciation or betterment.

“7. Although reasonable efforts were made, the records for five (5) MGA's (Allegiance General Agency, CAPCO, Clark and Company, Kendrick General Agency, and Texas American Horizon Insurance) could not be located or obtained. State and County has no information that depreciation or betterment were taken by these MGA's and also has no way to determine the amount of depreciation and betterment that may have been taken by these MGA's.


“8. Exhibit “2” attached hereto is a spreadsheet that shows the dollar amount of depreciation and betterment that was taken (either determined by audit, estimated based on partial audit, or projected) by the twenty-three (23) entities identified in paragraph 6 above, for the January 1, 1996 through present time period.

“9. Based on State and County's records and the information provided to it by the MGA's, State and County estimates that \$592,677.81 (principal amount) is due to consumers under the terms of this AVC and that interest on that amount, calculated through December 15, 2004, for the Advanced Underwriters, Alexander Underwriters General Agency, All Tex General Agency, AMCO Insurance Agency, American Hallmark Insurance Company, American Mercury Insurance Co., American Underwriting Managers Agency, Bison Managing General Agency, Bristol West Insurance Services of Texas, D.S. Barkley Texas Auto, Esprit General Agency, First Choice Underwriters, Frontier General Insurance Agency, Great Southern General Agency, Harbor Insurance Managers, Peak Underwriters, Safeway Managing General Agency, Southeast Surplus Underwriters, Spartan General Agency, Texas Windsor Group, Inc., Underwriters Managing General Agency, Inc., U.S. Auto Insurance Services/Insurance Depot and Vaughn General Agency programs is \$360,089.43.

“10. State and County represents that publication in newspapers of general and daily circulation in Texas cities having a population of 500,000 or more, as determined by the most recent U.S. census, will result in publication in cities and those counties immediately adjacent to those cities in which approximately ninety percent (90%) of State and Countys' insureds reside. If publication in

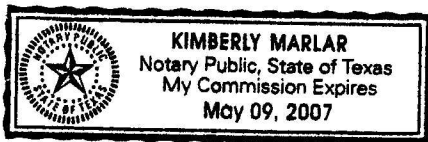
such cities results in less than ninety percent (90%) coverage, then State and County will publish the notice in the next largest cities as necessary to achieve at least ninety percent (90%) coverage.”

Further Affiant sayeth not.


David Cleff, General Counsel

SWORN TO AND SUBSCRIBED before me on the 6 day of January,

2005.



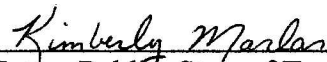

Notary Public, State of Texas

EXHIBIT "1"

**State and County Mutual Fire Insurance Company
Managing General Agency for Period 1/1/1996 through 8/31/04**

**Advanced Underwriters
Alexander Underwriters General Agency
All American General Agency
All Tex General Agency
All Texas General Agency (now Best Texas General Agency)
Allegiance General Agency
AMCO Insurance Agency
American Century Casualty Company ("ACCC General Agency")
American Hallmark Insurance Company
American Mercury Insurance Co.
American Southwest Insurance Managers
American Underwriting Managers Agency
Associated General Agency
Bison Managing General Agency
Bristol West Insurance Services of Texas
CAPCO
Clark and Company
Combined General Agency
D.S. Barkley Texas Auto
Esprit General Agency
First Choice Underwriters
Frontier General Insurance Agency
Great Southern General Agency
Harbor Insurance Managers
Heritage General Agency
Ideal General Agency/Louis A. Williams & Assoc.
Imperial General Agency of Texas
Instant Auto Insurance
Insurance Depot/U.S. Auto Insurance Services
Kendrick General Agency
Lyndon General Agency
Mendota Insurance Services
Peak Underwriters
Reliant American General Agency
Russell Grace, Inc.
Safeway Managing General Agency
Scanio, Thompson & Associates
Southeast Surplus Underwriters**

Southern United General Agency
Spartan General Agency
Standard Insurance Agency
Texas All Risk General Agency
Texas American Horizon Insurance
Texas Windsor Group, Inc.
Underwriters Managing General Agency, Inc.
Van Wagoner Companies
Vaughn General Agency

EXHIBIT "2"

**Depreciation and Betterment Taken
January 1, 1996 through February 28, 2003**

| Program | D&B Amount Projected | D&B Amount Actual | Total D&B |
|---|-------------------------------------|----------------------------------|----------------------|
| Alexander Underwriters | \$144,519.08 | \$16,378.74 | \$160,897.82 |
| All Tex General Agency | \$0.00 | \$2,364.29 | \$2,364.29 |
| Amco | \$0.00 | \$31.96 | \$31.96 |
| American Hallmark | \$48,429.65 | \$5,456.25 | \$53,885.90 |
| American Mercury | \$13,278.89 | \$3,390.95 | \$16,669.84 |
| American Underwriting | \$1,645.28 | \$6,581.13 | \$8,226.41 |
| Bison MGA | \$1,707.22 | \$193.72 | \$1,900.94 |
| Bristol West | \$0.00 | \$1,268.57 | \$1,268.57 |
| D.S. Barkley | \$0.00 | \$1,170.92 | \$1,170.92 |
| Esprit | \$0.00 | \$5,917.75 | \$5,917.75 |
| Frontier | \$0.00 | \$19,898.28 | \$19,898.28 |
| Harbor | \$82,835.89 | \$8,637.56 | \$91,473.45 |
| Safeway Ins. Group | \$4,284.72 | \$1,620.04 | \$5,904.76 |
| Southeastern Surplus, including Spartan | \$655.00 | \$1,994.96 | \$2,649.96 |
| Texas Windsor Group | \$0.00 | \$80,599.95 | \$80,599.95 |
| Underwriters MGA | \$7,375.02 | \$2,311.05 | \$9,686.07 |
| U.S. Auto Ins. Serv. | \$0.00 | \$1,454.27 | \$1,454.27 |
| Vaughn General Agency | \$4,074.93 | \$452.77 | \$4,527.70 |
| Unistar (includes Advanced Underwriters, First Choice, Great Southern, and Peak Underwriters) | \$0.00 | \$124,148.97 | \$124,148.97 |
| Total: | \$308,805.68 | \$283,872.13 | \$592,677.81 |

EXHIBIT C

Date: _____, 2005

State and County Mutual Fire Insurance Company ("State and County") and the Texas Attorney General, Greg Abbott, have recently come to an agreement regarding deductions for depreciation or betterment on certain collision or comprehensive coverage auto insurance claims. Despite the fact that this was a common practice among insurance companies, State and County has elected to avoid the additional time and expense of litigation with the Attorney General by settling the issue and avoiding the potential of increased costs which could result in raising automobile insurance rates.

State and County has agreed to return to eligible State and County policyholders the amount deducted for depreciation or betterment on their claims. State and County has also agreed to pay to the insured 10% per annum simple interest on the deduction amount with such interest to be calculated from the date the claim was originally paid. You may be an eligible policyholder if:

- (1) You presented a collision or comprehensive claim for damages to an auto covered under your State and County policy (other than a total loss), AND
- (2) Your claim was paid between January 1, 1996, and February 28, 2003, AND
- (3) A betterment or depreciation amount was noted on your estimate, or you believe it was deducted, and a deduction for betterment or depreciation can be verified by your own records or a presently existing claim file. In order to expedite the claim process, please provide a copy of your written estimate, if available.

Enclosed with this notice is a claim form for you to complete in order to determine whether you are eligible for a return of the amount deducted for depreciation or betterment in accordance with the above eligibility requirements. If you believe you meet the above criteria, please complete the attached form, along with any supportive documentation, and return it by first class mail to the following:

Robert Hudson
State and County Claims Administrator
c/o Wellington Financial Services, Inc.
P.O. Box 230
Fort Worth, TX 76101

YOU MUST COMPLETE AND MAIL THE ATTACHED CLAIM FORM WITHIN 90 DAYS OF THE DATE OF THIS LETTER.

If you have any questions concerning this form, please contact the Claims Administrator at (817) 732-2111 x3025.

EXHIBIT D

POLICYHOLDER SETTLEMENT CLAIM FORM

RETURN THIS FORM BY MAIL ONLY IF A BETTERMENT OR DEPRECIATION AMOUNT WAS NOTED ON YOUR VEHICLE ESTIMATE, OR IF YOU BELIEVE BETTERMENT OR DEPRECIATION WAS DEDUCTED AND A DEDUCTION CAN BE VERIFIED BY YOUR OWN RECORDS OR A PRESENTLY EXISTING CLAIM FILE.

Named Insured: _____

Current Address: _____

(Include City, State, and Zip Code)

Current Home Phone: _____

State and County Auto Policy Number (at time of loss): _____

Claim Number (if available; please refer to any correspondence received with your claim): _____

Date of Loss (if known): _____

Signature

Date

YOU MUST COMPLETE AND MAIL THIS CLAIM FORM WITHIN 90 DAYS OF THE DATE IT WAS MAILED TO YOU.

For internal use only

Date Mailed: ____/____/____ Date Received: ____/____/____ MGA: _____

Date MGA: ____/____/____ Final Status: _____ Final Date: ____/____/____

EXHIBIT E

NOTICE OF SETTLEMENT AND CLAIMS PROCEDURE FOR STATE AND COUNTY MUTUAL FIRE INS. CO. POLICYHOLDERS

State and County Mutual Fire Insurance Company ("State and County") and the Texas Attorney General, Greg Abbott, have recently come to an agreement regarding deductions for depreciation or betterment on certain collision or comprehensive coverage auto insurance claims. State and County has agreed to return to eligible State and County policyholders the amount deducted for depreciation or betterment on their claims. State and County has also agreed to pay to the insured 10% per annum simple interest on the deduction amount with such interest to be calculated from the date the claim was originally paid. You may be an eligible policyholder if:

- (1) You presented a collision or comprehensive claim for damages to an auto covered under your State and County policy (other than a total loss), AND
- (2) Your claim was paid between January 1, 1996, and February 28, 2003, AND
- (3) A betterment or depreciation amount was noted on your estimate, or you believe it was deducted, and a deduction for betterment or depreciation can be verified by your own records or a presently existing claim file. In order to expedite the claim process, please provide a copy of your written estimate, if available.

IF YOU BELIEVE THAT YOU MEET THE ABOVE CRITERIA, YOU MAY REQUEST A CLAIM FORM BY CALLING (817) 732-2111 x3025 OR BY CONTACTING State and County VIA E-MAIL AT rhudson@wellingtonfinancialservices.com. You must complete and return the claim form, along with any supportive documentation, to the address below and the State and County Claims Administrator will determine whether you are eligible for a return of the amount deducted for depreciation or betterment, in accordance with the above eligibility requirements.

Robert Hudson
State and County Claims Administrator
c/o Wellington Financial Services, Inc.
P.O. Box 230
Fort Worth, TX 76101

YOU MUST COMPLETE AND MAIL THE CLAIM FORM WITHIN 90 DAYS OF THE DATE YOU RECEIVE IT.

If you have any questions concerning the settlement between the Attorney General and State and County or this claim procedure, please contact the Claims Administrator at (817) 732-2111 x3025.

EXHIBIT F1--FORM LETTER

DATE

DATE OF LOSS:

POLICY NUMBER:

CLAIM NUMBER:

State and County Mutual Fire Insurance Company ("State and County") and the Texas Attorney General, Greg Abbott, have recently come to an agreement regarding deductions for depreciation or betterment on certain collision or comprehensive coverage auto insurance claims where your covered auto was not adjusted as a total loss.

As a result of this settlement, you are entitled to a payment equal to the amount deducted for depreciation or betterment on your claim, along with 10% per annum simple interest on the deduction amount calculated from the date the claim was originally paid. Accordingly, please find a check enclosed, which is payment for that amount.

If you have any questions regarding the enclosed check or this letter, please call (817) 732-2111 x3025. Please note that, if you accept this payment, this check must be negotiated no later than six (6) months from the date of its issuance. If you negotiate this check, you shall be deemed to have released State and County and its agents from any and all liability relating to this claim for the deduction of betterment or depreciation.

EXHIBIT F-2--FORM LETTER

Date: _____

Policyholder Name and Address: _____

Policy No. _____

Claim No. _____

State and County Mutual Fire Insurance Company ("State and County") acknowledges receipt of your completed claim form in connection with your above loss. After reviewing company records, State and County has determined that you meet the eligibility requirements for reimbursement of betterment or depreciation on your claim. State and County is pleased to provide you with the enclosed check representing the amount deducted for betterment or depreciation on your claim, along with 10% per annum simple interest on the deduction amount calculated from the date the claim was originally paid.

Please note that, if you accept this payment, this check must be negotiated no later than six (6) months from the date of its issuance. Additionally, if you negotiate this check, you shall be deemed to have released State and County and its agents and representatives from any and all liability relating to the deduction of betterment or depreciation on this claim.

If you have any questions regarding the enclosed check or this letter, please contact State and County at: (817) 732-2111 x3025.

EXHIBIT G

Date: _____

Policyholder Name and Address: _____

Policy No. _____

Claim No. _____

State and County Mutual Fire Insurance Co. ("State and County") acknowledges receipt of your completed claim form in connection with your above loss. After reviewing company records, State and County has determined that you do not meet the eligibility requirements for reimbursement of betterment or depreciation on your claim because either: (1) betterment or depreciation was never deducted on your claim; or (2) betterment or depreciation has already been refunded on your claim.

If you have any questions regarding this letter, please contact State and County at (817) 732-2111 x3025.